

1 Introduced by Committee on Finance
2 Referred to Committee on
3 Date:
4 Subject: Court procedure; mediation; medical malpractice actions
5 Statement of purpose of bill as introduced: This bill proposes to reenact the
6 procedures for mediation in medical malpractice actions that the General
7 Assembly passed in Act 171 of 2012. The procedures sunsetted on February 1,
8 2015.

9 An act relating to Mediation in Medical Malpractice Actions

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 Sec. 1. Sec. 1. Sec. 24d of No. 171 of the Acts of the 2011 Adj. Sess. (2012)
12 is amended to read:

13 Sec. 24d. ~~SUNSET~~

14 ~~12 V.S.A. chapter 215, subchapter 2 shall be repealed on February 1, 2015.~~

15 [Repealed.]

16 Sec. 2. 12 V.S.A. chapter 215, subchapter 2 is added to read:

17 Subchapter 2. Mediation Prior to Filing a Complaint of Malpractice

18 § 7011. PURPOSE

19 The purpose of mediation prior to filing a medical malpractice case is to
20 identify and resolve meritorious claims and reduce areas of dispute prior to

1 litigation, which will reduce the litigation costs, reduce the time necessary to
2 resolve claims, provide fair compensation for meritorious claims, and reduce
3 malpractice-related costs throughout the system.

4 § 7012. PRE-SUIT MEDIATION; SERVICE

5 (a) A potential plaintiff may serve upon each known potential defendant a
6 request to participate in pre-suit mediation prior to filing a civil action in tort or
7 in contract alleging that an injury or death resulted from the negligence of a
8 health care provider and to recover damages resulting from the personal injury
9 or wrongful death.

10 (b) Service of the request required in subsection (a) of this section shall be
11 in letter form and shall be served on all known potential defendants by certified
12 mail. The date of mailing such request shall toll all applicable statutes of
13 limitations.

14 (c) The request to participate in pre-suit mediation shall name all known
15 potential defendants, contain a brief statement of the facts that the potential
16 plaintiff believes are grounds for relief, and be accompanied by a certificate of
17 merit prepared pursuant to section 1051 of this title, and may include other
18 documents or information supporting the potential plaintiff's claim.

19 (d) Nothing in this chapter precludes potential plaintiffs and defendants
20 from pre-suit negotiation or other pre-suit dispute resolution to settle potential
21 claims.

1 § 7013. MEDIATION RESPONSE

2 (a) Within 60 days of service of the request to participate in pre-suit
3 mediation, each potential defendant shall accept or reject the potential
4 plaintiff's request for pre-suit mediation by mailing a certified letter to counsel
5 or if the party is unrepresented to the potential plaintiff.

6 (b) If the potential defendant agrees to participate, within 60 days of the
7 service of the request to participate in pre-suit mediation, each potential
8 defendant shall serve a responsive certificate on the potential plaintiff by
9 mailing a certified letter indicating that he or she, or his or her counsel, has
10 consulted with a qualified expert within the meaning of section 1643 of this
11 title and that expert is of the opinion that there are reasonable grounds to
12 defend the potential plaintiff's claims of medical negligence. Notwithstanding
13 the potential defendant's acceptance of the request to participate, if the
14 potential defendant does not serve such a responsive certificate within the
15 60-day period, then the potential plaintiff need not participate in the pre-suit
16 mediation under this title and may file suit. If the potential defendant is willing
17 to participate, pre-suit mediation may take place without a responsive
18 certificate of merit from the potential defendant at the plaintiff's election.

19 § 7014. PROCESS; TIME FRAMES

20 (a) The mediation shall take place within 60 days of the service of all
21 potential defendants' acceptance of the request to participate in pre-suit

1 mediation. The parties may agree to an extension of time. If in good faith the
2 mediation cannot be scheduled within the 60-day time period, the potential
3 plaintiff need not participate and may proceed to file suit.

4 (b) If pre-suit mediation is not agreed to, the mediator certifies that
5 mediation is not appropriate, or mediation is unsuccessful, the potential
6 plaintiff may initiate a civil action as provided in the Vermont Rules of Civil
7 Procedure. The action shall be filed:

8 (1) within 90 days of the potential plaintiff's receipt of the potential
9 defendant's letter refusing mediation, the failure of the potential defendant to
10 file a responsive certificate of merit within the specified time period, or the
11 mediator's signed letter certifying that mediation was not appropriate or that
12 the process was complete; or

13 (2) prior to the expiration of the applicable statute of limitations,
14 whichever is later.

15 (c) If pre-suit mediation is attempted unsuccessfully, the parties shall not be
16 required to participate in mandatory mediation under Rule 16.3 of the Vermont
17 Rules of Civil Procedure.

18 § 7015. CONFIDENTIALITY

19 All written and oral communications made in connection with or during the
20 mediation process set forth in this chapter shall be confidential. The mediation

1 process shall be treated as a settlement negotiation under Rule 408 of the

2 Vermont Rules of Evidence.

3 Sec. 3. REPEAL

4 12 V.S.A. chapter 215, subchapter 2 shall be repealed on July 1, 2017.

5 Sec. 3. EFFECTIVE DATE

6 This act shall take effect on passage.